



**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Christopher Hussey  
Jonathan Book

# *Town of Brookline*

## *Massachusetts*

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2016-0016  
OWNER: BENJAMIN COHEN  
1248 BEACON STREET, BROOKLINE, MA

Petitioner, 1248 Beacon LLC c/o Alan Berfield, applied to the Building Commissioner to convert a three-family dwelling to a four-family dwelling and construct a three-story addition at 1248 Beacon Street. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed April 28, 2016 at 7:30 p.m. in the Town Hall Selectmen's Hearing Room as the time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board, and to all others required by law. Notice of the hearing was published on April 14, 2016 and April 21, 2016 in the Brookline TAB, a newspaper published in Brookline. A copy of said notice is as follows.

## **Notice of Hearing**

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

**1248 BEACON ST – CONVERT A THREE-FAMILY TO A FOUR-FAMILY AND CONSTRUCT A THREE STORY ADDITION** in an M-1.5, Apartment House, zoning district, on **April 28, 2016, at 7:30 PM** in the 6<sup>th</sup> Floor Selectmen's Hearing Room (Petitioner/Owner: 1248 Beacon Street LLC c/o Allen Berfield) *Precinct 2*

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

1. **Section 5.05: Conversion**
2. **Section 5.09.2.a,d and j: Design Review**
3. **Section 5.22.3.b.2: Exceptions to Maximum Floor Area Ratio(FAR) For Residential Units**
4. **Section 5.43: Exceptions to Yard and Setback Regulations**
5. **Section 5.70: Rear Yard Requirements**
6. **Section 5.91: Minimum Usable Open Space**
7. **Section 6.01.2.a: General Regulations Applying to Off-Street Parking Facilities**
8. **Section 6.02, Paragraph 1: Table of Off-Street Parking Space Requirements**
9. **Section 6.04.5.b: Design of All Off-Street parking Facilities**
10. **Section 8.02.2: Alteration or Extension**
11. **Any Additional Relief the Board May Find Necessary**

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at [rsneirson@brooklinema.gov](mailto:rsneirson@brooklinema.gov).***

*Jesse Geller, Chair*

*Christopher Hussey*

*Jonathan Book*

**Publish: April 14, 2016 & April 16, 2016**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board Chairman Jonathan Book and Board Members Johanna Schneider and Christopher Hussey. Attorney Jeffrey Allen, of Lawson and Weitzen, LLP located at 88 Black Falcon Avenue in Boston, MA, waived the reading of public notice for the record and stated that the subject property currently presents a three-family dwelling that is situated on two separate parcels of land that would be merged for this proposal.

Attorney Allen described the subject property as a corner lot with a narrow building edge. The Petitioner is proposing to construct a three-story addition to the north of this narrow edge to extend the structure along James Street. This addition would result in a gross floor area of 8,999 square feet and a total of four residential units. The proposed addition also requires that the Petitioner regrade existing greenspace and parking areas to provide adequate vehicular access from James Street as well as additional off-street parking spaces associated with the creation of this fourth dwelling unit. Attorney Allen further stated that the portion of the property to be regarded and the existing northern façade to be altered are both in a current state of disrepair.

Attorney Allen confirmed that a total of 9.2 off-street parking spaces would be required to convert the subject property to a four-family dwelling; however the Town was not able to produce a definitive count regarding the number of existing parking spaces provided. Additionally, Attorney Allen noted that the Board of Appeals may waive by special permit up to half of the required additional parking under Zoning By-Law **Section 6.01.2.a.**

Attorney Allen stated that the Petitioner is considering either brick or zinc building materials for the proposed addition. Both the Petitioner and Planning Board Members agreed that the three-story addition should mimic the character of the existing structure but should

incorporate lighter building materials in an effort to distinguish new construction from existing historic features that front on to Beacon Street. Attorney Allen stated support for the idea that both the Planning Board and neighboring residents should “weigh in” on all final building materials as a condition of the grant of the requested zoning relief.

Project Architect Stephen Sousa, of Sousa Design located at 81 Boylston Street in Brookline, MA, further described the design of the proposed addition, specifically highlighting the unique geometry of the existing building edge in question. Mr. Sousa stated to the Board that his design maintains a clear goal to “mesh” the modern addition with the existing Beacon Street façade, particularly by incorporating a new “tower” at the corner of Beacon Street and James Street that would define the transition from historic to more modern architecture. Mr. Sousa stated that the Planning Board did not unanimously support the updated vocabulary of the proposed addition but Board Members did find the overall massing of the addition to be appropriate. For this reason, Mr. Sousa also supported final design review with the Planning Board prior to the grant of any building permit if the Board of Appeals does find that this proposal is worthy of zoning relief as requested. Mr. Sousa concluded his comments by describing a revised parking layout that best accommodates parking for four (4) total vehicles rather than five (5), as required by the Zoning By-Law.

Board Member Johanna Schneider requested additional detail as to the reasoning for four (4) parking spaces, which would require a variance. Attorney Allen stated that five (5) spaces are feasible but the Petitioner was not comfortable with the lack of vehicular circulation and landscape screening that would occur if five (5) full parking spaces were included in the final parking layout. Attorney Allen reiterated the fact that the subject property already presents a parking deficiency, thus it represents a pre-existing nonconformity that may be credited to reduce

the overall amount of new parking required to convert the property to a four-family dwelling. However, this credit still would only reduce the overall parking requirement to five (5) total off-street parking spaces. Regarding the need for a variance based on the proposed four (4) parking spaces, Attorney Allen stated that the unique shape and topography of the subject lot, as compared to others in the surrounding zoning district, qualifies this project for a variance. Attorney Allen noted that the property is also located in close proximity to multiple forms of public transportation.

Board Chairman Jonathan Book reminded the Board that there must be a nexus relationship between any claims of lot uniqueness and the Petitioner's ability to provide sufficient parking.

Board Member Schneider further stated that the variance requirement of hardship associated with the claim of uniqueness must also be established by the Petitioner. Ms. Schneider questioned whether the elimination of landscaped features necessary to create the fifth parking space is critical or serves as more of an amenity.

Attorney Allen responded by stating that the proposed landscape screening is important in terms of mitigating visual impact that would be generated by vehicle headlights and parked vehicles situated in close proximity to the James Street lot line. The five (5) vehicle parking layout requires reduced setbacks from James Street and is less effective from a vehicular maneuverability standpoint.

Attorney Allen described additional special permit relief requested by the Petitioner in order to complete this conversion to a four-family dwelling. Attorney Allen confirmed that the resulting floor area ratio (FAR) of 1.67 exceeds the requirement of 1.5 for the M-1.5 Apartment

House zoning district. This excessive floor area may be permitted by special permit if all pertinent design review standards are satisfied in accordance with Zoning By-Law Section 5.09.2. Attorney Allen confirmed that the Planning Board unanimously recommended approval of this proposal and specifically found that all relevant design review criteria are appropriately satisfied. Attorney Allen also reviewed project non-compliance with both rear-yard setback requirements and useable open space requirements. Attorney Allen referenced previously discussed landscape features along James Street to serve as counterbalancing amenities for the requested setback relief as required under By-Law Section 5.43. Additionally, the total area of usable open space would be increased from 261 square feet to 936 square feet due to the inclusion of a roof deck and the regrading of underutilized portions of the rear yard.

Board Member Hussey suggested that the parking layout that provides five (5) spaces rather than four (4) appears to include a more robust landscaping plan. Mr. Hussey also believed that angled parking may be more appropriate based on the configuration of the lot itself. Mr. Hussey requested that the Petitioner discuss parking stall dimensions in greater detail. Attorney Allen stated that the four-car layout includes all standard size parking stalls (8.5' x 18') and the five-car layout would include one compact space (7.5' x 16').

Board Chairman Book called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Susan Houston, of 1258 Beacon Street, stated that a number of neighboring residents are familiar with the proposal and attended the previous Planning Board meeting on this matter. Ms. Houston stated that she supported the grant of zoning relief contingent upon continued collaboration between the development team and neighboring residents regarding project design,

materials, and massing. Ms. Houston described the James Street lot line as a front façade rather than a rear portion of the structure and therefore it should be designed in a manner that reflects the character of the James Street neighborhood located immediately to the north. Ms. Houston also supported a special permit condition that would require final design approval by the Planning Board with public comment from residents.

Jerry Steinberg, of 1258 Beacon Street, concurred with Ms. Houston's comments and further stated that the four-car parking layout is more desirable because it maintains more open space and provides room to properly screen parked vehicles.

Board Chairman Book requested that Zoning Coordinator Jay Rosa deliver the findings of the Planning Board.

## **FINDINGS**

### **Section 5.05 – Conversions**

When converting a dwelling to create additional dwelling units in an M District, the Board of Appeals may by special permit waive any dimensional requirements except minimum lot size, provided no previously existing nonconformity to such requirements is increased and all other requirements of the By-law for conversions are met.

### **Section 5.09.2.a,d, & j – Design Review**

Exterior alterations on Beacon Street, multiple dwellings greater than four units, and any addition triggering FAR relief requires a *special permit* subject to design review standards listed under *Section 5.09.4(a-l)*. All conditions have been met; the most relevant sections of the design standards are described below:

#### **b. Relation of Buildings to Environment**

The proposal will provide new landscaped space along James Street, and maintain existing plantings and vegetation along Beacon Street. The building will have minimal shadows on both the street and adjacent buildings, as it occupies a corner lot which faces southwest, and provides off street parking at the rear of the lot, creating space between the abutting neighbor to the rear. Due to its sloped topography and unmaintained vegetation, the rear portion of the lot currently tends to collect debris and refuse, and this proposal will reconfigure this area to eliminate this.

#### **c. Relation of Buildings to the Form of the Streetscape and Neighborhood**

The proposal includes a new tower feature located on the southwest corner of the building at the intersection of Beacon and James Streets. The tower will complement the existing

building with a similar aesthetic and fenestration pattern. The site will be improved with a more efficient parking configuration, and new landscaped and useable open space. The rear portion of the addition will improve the building's appearance from James Street, as the rear elevation currently is composed of a wooden bay porch addition and a featureless brick wall with minimal windows.

**k. Heritage**

The new tower feature will better anchor the building on its corner lot, which currently lacks a defining feature. This tower will be similarly proportioned to the existing round bays located on Beacon Street and will respect the style and fenestration pattern of the existing building. The remaining portion of the addition will be more subdued so as not to detract from the prominence of the existing building and new tower feature.

**Section 5.22.3.b.2 – Exceptions to Maximum Floor Area Ratio**

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.70 – Rear Yard Requirements**

**Section 5.91 – Minimum Usable Open Space**

**Section 6.02.1.a – Off-Street Parking Space Regulations**

**Section 6.02 – Paragraph 1: Table of Off-Street Parking Space Requirements**

**Section 6.04.5.b – Design of All Off-Street Parking Facilities**

	Existing	Proposed	Required/ Allowed	Allowed By Sp Permit	Relief
<b>Floor Area Ratio</b>	1.22	1.67	1.5	1.8	SP *
<b>Rear Yard Setback</b>	46 ft. 2 in.	12.65 ft.	30 ft.		SP **
<b>Useable Open Space</b>	261 sq. ft.	936 sq. ft. (roof deck: 675 sf. ft.) (ground: 261 sf. ft.)	1,352.55 sq. ft.		SP ***
<b>Off-Street Parking</b>					
<ul style="list-style-type: none"> <li><b>Number of Spots</b></li> </ul>	3-5 No demarcation	4	9.2	5****	Variance
<ul style="list-style-type: none"> <li><b>Setbacks from lot lines</b></li> </ul>	Rear/side: 0 ft.	Rear/side: 0 ft.	10 ft		SP **
<b>Building Height</b>	33 ft. 7.25 in.	38 ft. 7 in.	45 ft.		Complies

\* Under **Section 5.22.3.b.2** the Board may allow by special permit an interior/exterior addition up to 120% of the permitted gross floor area so long as the maximum allowed FAR of 120% has not been reached.

\*\* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicants have stated counterbalancing amenities at this location will include new landscaping, screening of waste containers, and betterment of aesthetics on the front façade of the building by finishing the ground floor unit.



\*\*\*Under **Section 5.05**, when converting a dwelling to create additional dwelling units in an M District, the Board of Appeals may by special permit waive any dimensional requirements except minimum lot size, provided no previously existing nonconformity to such requirements is increased and all other requirements of the By-law for conversions are met.

\*\*\*\*Under **Section 6.01.2.a**, the Board of Appeals may waive up to one half of the required parking spaces when a structure is converted for one or more additional dwelling units.

**Section 8.02.2 – Alteration or Extension**

A special permit is required for an alteration or extension of a non-conforming structure.

Mr. Rosa stated that the Planning Board unanimously recommended approval of the three-story addition following two public meetings on the matter. In general, the Board felt that the proposed addition improves the somewhat awkward and deteriorating façade along James Street. Based on recommendations made at the first meeting, the architect altered the addition design and fenestration. The Planning Board agreed that a modern style design that complements the existing structure is more appropriate than attempting to replicate historic features. The Board was also satisfied that the scale of construction and the location of the addition are unlikely to result in damage to abutting structures. Board Members did recommend that the applicant continue to work with area residents to finalize building materials and should indicate the location of trash and recycling facilities on the final submitted site plan.

Mr. Rosa confirmed that should the Board of Appeals finds that the statutory requirements for a variance are met, the Planning Board recommends approval the plans by Sousa Design, dated 1/22/16, subject to the following conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit final elevations, including façade materials and details, subject to the review and approval of the Planning Board.
- 2) Prior to the issuance of a building permit, the applicant shall submit a final site plan, including parking, landscaping and counterbalancing amenities, and floor plans subject to the review and approval of the Assistant Director of Regulatory Planning.
- 3) Prior to the issuance of a building permit, the applicant shall submit a final construction management plan, including location of construction vehicle parking, and name and cell

number of project manager, subject to the review and approval of the Building Commissioner, with a copy submitted to the Planning Department.

- 4) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.

Board Chairman Book requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the project is well designed considering the limitations of both the site and the structure itself. Mr. Yanovitch agreed that the requested relief is rather modest, aside from the parking requests. Mr. Yanovitch stated that the town is somewhat split when considering the need for parking, particularly in areas of Town that are transit rich such as this. Mr. Yanovitch confirmed that the Building Department has no objection to the relief as requested, and he further supported the imposed condition requiring a construction management plan.

Attorney Allen stated that the five-space parking layout would require a special permit and is therefore the "path of least resistance" but he believed that the four-space proposal fits the site more appropriately and is both safer and more aesthetically appealing.

Board Member Hussey and Mr. Yanovitch agreed that the submitted site plan includes adequate space at the rear of the structure to safely locate trash and recycling facilities. Mr. Hussey also noted that this portion of the site provides easy access from the basement level of the structure.

The Board deliberated on the merits of special permit relief as requested. Board Chairman Book supported Attorney Allen's summation that the requested relief associated with

yard dimensions and floor area ratio is somewhat minimal when considering the proposal in totality. Mr. Book agreed that these special permits may be granted within the parameters of the Zoning By-Law, but he was troubled by the proposed parking scheme. Mr. Book confirmed that the variance would be required for the four-space proposal and he was not convinced that Attorney Allen had made a compelling argument to demonstrate that the statutory requirements for a variance under M.G.L., c. 40A, Section 10 have been satisfied.

Board Member Hussey deferred to other Board Members regarding the legal validity of the requested variance, but he reiterated the fact that he believed the five-space option to be feasible for the site. This option would also effectively eliminate the need for a variance.

Board Member Schneider noted the unusual configuration of the lots and she felt that the proposal was well done as an infill project. Ms. Schneider stated that the Board is generally supportive of requests for parking relief within transit rich areas and she did believe that the reduced parking count, if granted, would not derogate from the intent of the local Zoning By-Law. Ms. Schneider believed that the fifth space may be excessive for this particular lot but she stated that she was not presented with a convincing variance argument, particularly regarding substantial hardship placed on the Petitioner.

Attorney Allen stated that due to the unique shape of the lot the four-car parking configuration would maintain safer vehicular circulation, particularly during inclement weather, than the five<sup>2</sup>-car parking configuration. Attorney Allen further stated that the setback buffer provided by the four-car layout maintains pedestrian safety and driver site lines. Attorney Allen believed that the five-car parking layout would result in undue nuisance and hazard placed on area vehicles and pedestrians.

Mr. Sousa added that the four-car parking configuration would maintain a clear aisle for a large number of residents to maintain rear access to several row-houses located along Beacon Street.

Mr. Book and Ms. Schneider, upon further considering Attorney Allen's variance argument, agreed with Attorney Allen's description of both lot uniqueness and associated hardship placed on the Petitioner and believe that the statutory requirements to grant a variance for the four-car parking configuration were met.

Board Member Hussey supported the request for zoning relief and stated a preference for lighter construction materials for the addition itself that would match the existing brick structure. Mr. Hussey felt that a brick cantilever design is not appropriate for the site from an architectural standpoint.

The Board voted unanimously that the requirements have been met for the issuance of a special permit under Sections 5.05, 5.09.2.a, d & j, 5.43, and 9.05 of the Zoning By-Law, granting relief from the provisions of Sections 5.22.3.b.2, 5.70, 5.91, 6.04.5.b, and 8.02.2. The Board made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- The specific site is an appropriate location for such a use, structure, or condition.
- The use as developed will not adversely affect the neighborhood.
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

The Board also voted unanimously that the statutory requirements have been met for the issuance of a variance under M.G.L., c.40, §10, granting relief from the provisions of Section 6.02 of the Zoning By-Law.

Accordingly, the Board voted unanimously to grant special permit and variance relief, subject to the following revised conditions:

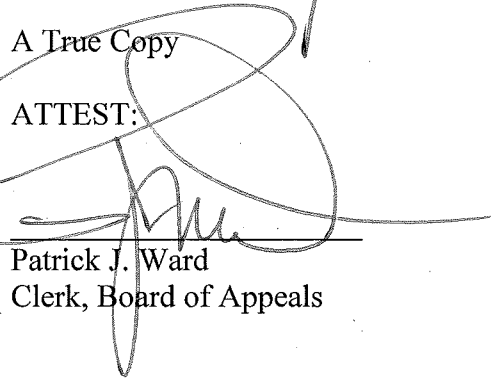
- 1) Prior to the issuance of a building permit, the applicant shall submit final elevations, including façade materials and details, subject to the review and approval of the Planning Board.
- 2) Prior to the issuance of a building permit, the applicant shall submit final floor plans and a final site plan including the locations of all parking, trash receptacles, landscaping, and counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 3) Prior to the issuance of a building permit, the applicant shall submit a final construction management plan, including location of construction vehicle parking, and name and cell number of project manager, subject to the review and approval of the Building Commissioner, with a copy submitted to the Planning Department.
- 4) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

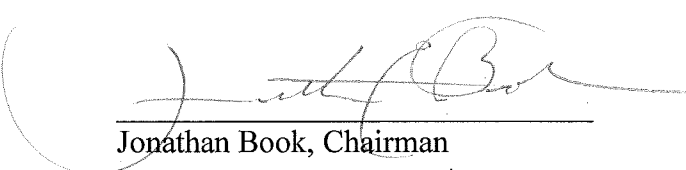
Unanimous decision of the  
Board of Appeals

Filing Date: 6/8/16

A True Copy

ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals

  
Jonathan Book, Chairman